

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

HECTOR BIENVENIDO ARIAS,)	
Petitioner)	CIVIL ACTION NO. 05-10684-MLW
)	
v.)	
)	
UNITED STATES OF AMERICA,)	
Respondent)	
)	

**Government's Motion To Substitute
Exhibits In Support Of Its Memorandum**

The United States of America, by Michael J. Sullivan, United States Attorney, and Michael J. Pelgro, Assistant U.S. Attorney, hereby files this motion to substitute exhibits in support of its memorandum in opposition to the petitioner's motion under 28 U.S.C. § 2255. The government requests that the Court consider the three exhibits attached to this motion instead of the three exhibits attached to the government's memorandum.

In support of this motion, the government states that, on December 5, 2005, it filed its memorandum in opposition to the petitioner's motion under 28 U.S.C. § 2255. The government attached to the memorandum three exhibits from the underlying criminal case. Certain exhibits, however, did not scan properly so that only the first page of the proposed exhibit was filed. The government has re-scanned the exhibits in their entirety.

The government therefore respectfully requests that the Court allow this motion to substitute the three exhibits attached to this motion instead of the three exhibits attached to the previously-filed memorandum.

Respectfully submitted,

MICHAEL J. SULLIVAN
United States Attorney

By: /s/Michael J. Pelgro
Michael J. Pelgro
Assistant U.S. Attorney

DATED: December 7, 2005.

CERTIFICATE OF SERVICE

This is to certify that I have this day served upon the person listed below a copy of the foregoing document by depositing in the United States mail a copy of same in an envelope bearing sufficient postage for delivery:

Hector Bienvenido Arias
Inmate No. 23566-038
FCI Elkton
P.O. Box 10
Lisbon, OH 44432

This 7th day of December 2005.

/s/Michael J. Pelgro
MICHAEL J. PELGRO
ASSISTANT UNITED STATES ATTORNEY

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS


UNITED STATES OF AMERICA)	CR 01-10056
)	Boston, MA
v.)	September 10, 2002
)	
NELSON RUDY TEJEDA, ET AL)	

BEFORE THE HONORABLE MARK L. WOLF
UNITED STATES DISTRICT JUDGE

APPEARANCES:

(As previously noted.)

JUDITH A. TWOMEY, RPR
Official Court Reporter
One Courthouse Way
Courtroom 10~Room 5200
Boston, MA 02210
(617) 946-2577



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1 THE DEFENDANT: Yes, with the help of my
2 attorney.

3 THE COURT: Okay. And then when we were here
4 last week, I discussed with counsel whether they could
5 talk further to narrow any of the disputes with regard
6 to weight, for example. There were some instances where
7 the Probation Department had a higher weight than the
8 government was advocating. But it appeared there might
9 be an area in which reasonable people could reasonably
10 differ, based on the evidence, and there were some
11 instances where, although I may not have verbalized
12 this, it appeared that some of the defendants were
13 taking positions with regard to weight, particularly
14 defendants high up in the conspiracy that there's very
15 strong evidence to indicate would be proven to be too
16 low.

17 But has there been any evolution in the
18 parties' positions?

19 MR. PELGRO: Yes, your Honor. And, if you
20 want, I can go through them defendant by defendant.

21 THE COURT: Sure.

22 MR. PELGRO: With regard to Hector B. Arias, my
23 understanding is that the defendant is now not disputing
24 the government's drug quantity figure of one to three
25 kilograms of heroin, which is base offense level 32. So

1 -- and that's the position the government took in the
2 plea agreement. So that the government continues to
3 believe that's a reasonable estimate of this mass of
4 evidence.

5 THE COURT: Okay. Mr. McCall, is that correct?

6 MR. McCALL: That's correct, your Honor.

7 MR. PELGRO: Your Honor, the defendant is also
8 agreeing to the four level role adjustment, which
9 Probation has also indicated is appropriate. The
10 government is dropping its objection concerning
11 obstruction of justice, which Probation had declined to
12 give. And that brings into play the acceptance issue
13 and, obviously, the parties are agreeing to the
14 acceptance reduction.

15 So, essentially, your Honor, we have no further
16 disputed factual issues with regard to Hector B. Arias.

17 THE COURT: Mr. McCall, is that correct?

18 MR. McCALL: That's correct, your Honor.

19 THE COURT: In a few moments, I'm going to go
20 over -- actually, it may make sense to do this right
21 now.

22 Can I see the file for Hector B. Arias.

23 (Short pause.)

24 THE COURT: Would Hector B. Arias please stand.

25 Mr. McCall, have you and Hector B. Arias each

1 read -- have you read the presentence report?

2 MR. McCALL: Yes, your Honor.

3 THE COURT: Including the addenda with the
4 objections?

5 MR. McCALL: Yes, your Honor.

6 THE COURT: Mr. Arias, was the presentence
7 report and the objections in the back of it read to you
8 in Spanish?

9 THE DEFENDANT: Yes.

10 THE COURT: And, Mr. McCall, other than the
11 objections in the back of the report, did you or Mr.
12 Arias see anything in the report that you thought was
13 inaccurate that might make a difference to sentencing?

14 MR. McCALL: No, your Honor.

15 THE COURT: Mr. Arias, did you see anything in
16 the report other than what your attorney originally
17 objected to that looked like it was inaccurate and might
18 make a difference to sentencing?

19 THE DEFENDANT: In my opinion, there are some
20 parts that are not good.

21 THE COURT: Mr. McCall, in your opinion, there
22 are some parts that are not correct.

23 Mr. Arias, have you discussed with your
24 attorney what parts are not correct and told him what
25 parts you think are not correct?

1 THE DEFENDANT: Yes.

2 THE COURT: Let's see on some of this.

3 Mr. Arias or Mr. McCall, I was just told that
4 Mr. Arias now agrees that under the Guidelines he should
5 be held responsible for one to three kilograms of heroin
6 rather than one to 400 grams, which was the basis of
7 your objection, or the 3,146 grams found by the
8 Probation office. Is that indeed Hector B. Arias'
9 present position?

10 MR. McCALL: It was yesterday, after about five
11 or six hours with an interpreter in the Marshal's
12 lockup, we left, and that was his position taken by
13 himself, his wife, and son.

14 THE COURT: Mr. Arias, are you as you stand
15 here today in agreement, after speaking with your
16 attorney, that you should be held responsible for one to
17 three kilograms of drugs?

18 THE DEFENDANT: Yes.

19 THE COURT: And are you fully satisfied with
20 Mr. McCall's work as your lawyer in this case?

21 THE DEFENDANT: Yes.

22 THE COURT: Well, I'm going to accept that
23 resolution of this dispute. The Probation Department
24 recommended 3,146 grams, which I believe would expose
25 Mr. Arias to a higher sentence than the one to three

1 kilograms. Having studied the presentence report, I
2 find that there was very substantial evidence to
3 establish the one to three kilograms, and the only
4 serious question I can perceive, if this matter were
5 litigated, is whether he would be held responsible for a
6 higher amount and, therefore, have to serve a higher
7 sentence. So I certainly think there's a proper factual
8 basis for this agreement. On the other hand, we're only
9 talking about the difference of less than 150 grams.
10 There are some debatable issues that exist, and I think
11 that since, in situations like this, reasonable
12 approximations are not only permissible but required,
13 that the agreement the parties reached is reasonable
14 and, therefore, I will accept it.

15 Accordingly, the base offense level is 32.

16 Then, there was an issue as to whether -- as
17 Probation and the government agree -- there should be a
18 four level enhancement for role in the offense. The
19 evidence of that in the presentence report seemed
20 overwhelming.

21 Mr. McCall, you tell me that Mr. Arias now
22 agrees to accept that and withdraws his --

23 MR. MCCALL: I think, as your Honor said, he
24 realizes that the evidence is overwhelming, and I don't
25 have much to say about it.

1 THE COURT: But that is an objection you've
2 withdrawn?

3 MR. McCALL: Yes, your Honor.

4 THE COURT: Hector B. Arias, please stand
5 again.

6 Do you agree that under the Sentencing
7 Guidelines it is proper to give you a four level upward
8 adjustment for your role as an organizer or leader of a
9 group which consisted of more than five defendants?

10 THE DEFENDANT: Yes, that's fine.

11 THE COURT: And I will, as I said, or
12 indicated, accept that, because there is overwhelming
13 evidence to establish that.

14 As I understand it, the government has
15 withdrawn its objection with regard to obstruction,
16 which also strikes me as -- although my role in
17 assessing the government's judgments are different --
18 but as reasonable in the circumstances.

19 MR. PELGRO: Yes, your Honor. Related to
20 family relationships, essentially.

21 THE COURT: Including not acknowledging that
22 Hector A. Arias, who is in the courtroom, or mentioning
23 that he was his son.

24 MR. PELGRO: Right.

25 THE COURT: That one, the government would have

1 had some difficulty proving, and it is proper to get the
2 three level reduction for acceptance of responsibility.

3 So, if I've done the arithmetic right, I think
4 that leaves us at a level 33.

5 MR. McCALL: Yes, your Honor.

6 THE COURT: So with regard to this defendant,
7 the total offense level is 33. The criminal history
8 category is 1. To the best of my knowledge, nothing
9 changes with regard to the other categories. 33-1, the
10 Guidelines are 135 to 168 months. There's 36 months
11 supervised release, a fine range of 25,000 to a million
12 dollars, and a \$100 special assessment.

13 MR. PELGRO: Judge, on the issue of supervised
14 release, the government, as you may or may not be aware,
15 has sort of an ongoing issue about that with Probation.
16 The government alleged over a kilo of heroin. The
17 defendant is agreeing to over a kilo of heroin. If you
18 look in 841B1A, it says the period of supervised release
19 shall be not less than five years. The government feels
20 that that's the period of supervised release that is
21 applicable here. I believe, based on Apprendi,
22 Probation takes a different tap on that. I think in
23 this situation where the defendant is agreeing to that
24 quantity and it's alleged in the indictment --

25 THE COURT: What is it that raises it to 60

1 months?

2 MR. PELGRO: B1A, your Honor. Title 21,
3 section 841B1A says, if the quantity is 1,000 or more
4 grams of heroin, the period of supervised release shall
5 be not -- shall be at least five years.

6 THE COURT: Well, I guess I'll reserve judgment
7 on that until I impose sentence.

8 Other than that, does the government agree that
9 the Guideline ranges are as I've calculated them?

10 MR. PELGRO: Yes, your Honor.

11 THE COURT: Mr. McCall, do you agree?

12 MR. McCALL: I agree.

13 FROM THE FLOOR: I believe fine is 17,500 on a
14 level three.

15 THE COURT: 17,500, okay, with that amendment.

16 Mr. Arias, you may be seated.

17 Let's go -- why don't I go defendant by
18 defendant. I think -- actually, who's the next person
19 you reached an agreement with?

20 MR. PELGRO: Partial agreement with Hector A.
21 Arias.

22 THE COURT: All right.

23 MR. PELGRO: Your Honor, with regard to Hector
24 A. Arias, my understanding is that the defendant is
25 agreeing with the government's position concerning the

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA)
)
v.)
)
NELSON RUDY TEJEDA, ET AL)

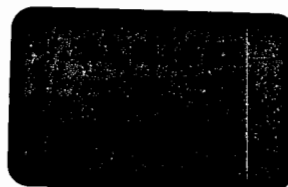
CR 01-10056
Boston, MA
September 11, 2002

BEFORE THE HONORABLE MARK L. WOLF
UNITED STATES DISTRICT JUDGE

APPEARANCES:

(As previously noted.)

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1 going to do each defendant one by one. I'm going to
2 start with Hector B. Arias, go to Hector A. Arias,
3 Yolanda Herrera.

4 We'll take a break now for about ten minutes,
5 and I will begin sentencing the defendants.

6 Court will be in recess.

7 (Short break.)

8 THE CLERK: Court is back in session. You may
9 be seated.

10 THE COURT: You may be seated.

11 As we have discussed, we'll start with Hector
12 B. Arias. He's already told me that he has read the
13 presentence report. We've identified the issues that
14 might make a difference to sentencing. I believe that
15 except with regard to supervised release there are no
16 open issues. The parties and the court have agreed that
17 the amount attributable to the defendant is one to three
18 kilograms. He was a leader and organizer of a
19 conspiracy that involved more than five people. There
20 is no obstruction of justice by him. There is at most
21 or worst innocent errors. Acceptance of responsibility
22 is appropriate.

23 I'm going to leave open for just a second the
24 issue of supervised release. But, Mr. McCall, have I
25 recited that all properly?

1 MR. McCALL: Yes, your Honor. Just one thing I
2 would mention to the court. Perhaps I overlooked it.
3 In the presentence report, on financial condition,
4 ability to pay, it's my memory and I did check it with
5 Pretrial Services. There was a lengthy interview, and
6 they were taking Mr. Arias back to Plymouth. I believe
7 our collective memory is that we did touch on what if
8 any assets he had available and that there weren't any.

9 THE COURT: Actually, we'll discuss that.
10 Maybe I will stop.

11 Let's go to the addendum to the presentence
12 report. It begins at page 124. The first objection
13 generated -- by the government -- generated a
14 correction.

15 The second objection generated an amendment.

16 The third objection went to weight. So that
17 objection should be allowed and is allowed.

18 The fourth objection relates to the weight and
19 is allowed.

20 The fifth objection is the same.

21 The sixth objection generated an amendment.

22 The seventh objection relates to the earlier
23 objections concerning Guideline calculations.

24 Objection 8 seems to require no ruling. Is
25 that correct?

1 MR. PELGRO: That's correct, your Honor.

2 THE COURT: Do you agree, Mr. McCall?

3 MR. McCALL: I do, your Honor.

4 THE COURT: The defendant's objection, the
5 first one, goes to obstruction of justice and, by
6 agreement, that is allowed. The obstruction enhancement
7 has been removed.

8 The second objection related to acceptance of
9 responsibility, and that's allowed. He is getting
10 credit or acceptance of responsibility.

11 The third objection related to weight, and it's
12 allowed in part. I'm not holding him accountable for
13 3,605 grams, but he is being held for one to three
14 kilograms.

15 The fourth objection has been withdrawn. That
16 was the objection to a four level increase as an
17 organizer or leader. And even if it hadn't been
18 withdrawn, the evidence is overwhelming that that four
19 level upward adjustment is appropriate.

20 The fifth objection, again, relates to amount.

21 And I think that's all the objections. Is that
22 correct?

23 MR. PELGRO: Yes, your Honor.

24 MR. McCALL: Yes, your Honor.

25 THE COURT: Therefore, I'm putting aside the

1 issue of supervised release. The total offense level,
2 as I calculate -- but none of this is rhetorical --
3 counsel and the Probation Department should correct me
4 if you think there's an error -- total offense level is
5 33. The criminal history category is 1. Guidelines are
6 135 to 168 months in prison. Fine range of 17,500 to \$1
7 million. And a \$100 special assessment.

8 Do the parties agree with that as far as it
9 goes?

10 MR. PELGRO: Yes, your Honor.

11 MR. McCALL: Yes, your Honor.

12 THE COURT: I hear no (sic) from Probation. If
13 you want, I'll give the parties an opportunity to be
14 heard on this but I, at the moment, think the government
15 is right and that 60 months supervised release is
16 proscribed by the statute and not inapplicable because
17 of the Supreme Court decision in Apprendi.

18 First of all, it's not clear that the five
19 years raises or represents a raise in the maximum
20 statutory penalty. There's cases, I think, like US
21 versus Quiodel (sic), 229 F 3rd 926, that suggest that
22 supervised release of up to ten years or more can be
23 imposed under this drug statute. There's no expressed
24 maximum and, therefore, five years would be within the
25 statutory cap.

1 More significantly, in this case, or to me, the
2 defendant pled guilty and waived his right to have the
3 jury decide the amount and, therefore, it would be
4 permissible for the court, if necessary, to decide it,
5 and to have the amount of supervised release flow from
6 that decision.

7 In addition, with regard to this defendant, at
8 least, there has been no dispute regarding the amount.
9 The parties agree that it's one to three kilograms. As
10 things evolved, I've basically accepted that resolution
11 as reasonable. So I haven't even decided the amount.
12 If it had been litigated, it's possible I would have
13 decided it was more than the three kilograms as
14 Probation recommended, although for reasons I said the
15 other day, approximations are required in matters like
16 this, and this was a reasonable arm's length resolution
17 of the issue.

18 So, for all of those reasons, it's my present
19 intention, except possibly hearing from Mr. McCall, to
20 impose 60 months of supervised release. It may be
21 academic, because when Mr. Arias gets out of prison,
22 he's likely to be deported. But do you want to be heard
23 on this issue?

24 MR. MCCALL: No, your Honor.

25 THE COURT: So the Guideline range for Mr.

1 Arias and for others as to whom that analysis applies,
2 in my view, is 60 months.

3 What then is the government's recommendation
4 with regard to Hector B. Boogie Arias and what are the
5 reasons for it?

6 MR. PELGRO: Your Honor, the government is
7 recommending a period of incarceration of 168 months, to
8 be followed by a term of supervised release of five
9 years. The government is not advocating a fine in this
10 case because the government doesn't feel the defendant
11 has the ability to pay a fine, and the \$100 special
12 assessment.

13 Your Honor, as you can tell from the voluminous
14 presentence report and some of the evidence we've heard,
15 the defendant and his son are the two persons most
16 responsible for the distribution of up to three
17 kilograms of heroin on the streets over that two plus
18 year period of time that we can prove this conspiracy
19 was in existence.

20 The defendant, as you know from the PSR,
21 illegally entered the United States in 1991. He jumped
22 bail on INS deportation proceedings. He relocated to
23 Boston. Despite living with his common law wife with
24 whom he's had a relationship for a number of years, he
25 entered into this marriage, civil marriage ceremony,

1 which the government contends was a sham, and then he
2 used that to try to persuade INS to change his status
3 from illegal to legal.

4 He's used a false identity, Ramos Pogaro (sic),
5 for medical benefits and different types of things.
6 He's used a false Social Security number in order to
7 work. But, more importantly, he's the person who sat in
8 7 Daria Court and pulled the strings by which all of
9 this conspiracy was obtained from multiple suppliers,
10 processed and bagged and prepared for distribution by
11 his son, by his common law wife, sometimes by his son's
12 girlfriend, Linna Gonzalez, in that apartment, stored in
13 the apartment, and then sent out through a whole network
14 of couriers to various retail distributors on the
15 street. That when the DEA began its investigation in
16 January of 1999, that conspiracy was in full bloom.
17 That was going. It was still going when the defendants
18 were arrested on February 23, 2001, over two years
19 later.

20 The defendant, as you can see from the
21 presentence report, was not making the deliveries except
22 for a couple here and there. The defendant was really
23 not the person keeping track of the financial records.
24 He delegated that responsibility to his common law wife,
25 Ms. Herrera. He was not the person who was reaching

1 out, for the most part, and contacting the suppliers and
2 organizing the acquisition of inventory. He delegated
3 that responsibility to his son. He was not the person
4 who was actually sitting there and putting the cut into
5 the heroin and making the packets. He had delegated
6 that responsibility to his family members.

7 As you can see from all of the presentence
8 reports in this case, he exercised tight control and
9 discipline over Ms. Herrera and, to a certain extent,
10 over his son Arias, although they had disagreements
11 along the way.

12 The defendant is the classic insulated leader
13 who does not take the risk and go out on the street and
14 make the deals but reaps the benefits. He reaped the
15 profits from all this, and he's the person the
16 Guidelines say has the most relative responsibility, and
17 he should get the highest sentence in this case.

18 THE COURT: Thank you. Mr. McCall.

19 MR. McCALL: Thank you, your Honor.

20 Your Honor, my client is 50 years old, and he
21 has no prior record. His offense conduct and the role
22 in the offense are reflected in the Guidelines. He has
23 accepted responsibility. It was his decision, your
24 Honor, not to pursue what may well have been a less than
25 compelling, if not frivolous argument on the lesser

1 amount. That was his decision. It's by way of saying,
2 your Honor, since his arrest, he's done everything that
3 he can do to own up and accept responsibility.

4 He's in very poor health. He suffered a heart
5 attack in 1999. He was hospitalized for an extended
6 period of time. He has high blood pressure. He's
7 diabetic. I can state from personal knowledge that I
8 have been down to Plymouth on several occasions that
9 I've been down to see him. On several of those
10 occasions, he's actually been in the infirmary being
11 treated by physicians. It's been an extremely difficult
12 pretrial detention for him.

13 The presentence report, your Honor, recounts a
14 difficult childhood. I know your Honor has read it, so
15 I'm not going to repeat it, what's in the biographical
16 section.

17 THE COURT: Doesn't it also -- I'm sorry go
18 ahead.

19 MR. McCALL: Just he had a difficult parenting
20 situation where he was actually locked in the house at
21 times due to a domestic disturbance between his wife
22 (sic) and his father.

23 THE COURT: His mother and his father.

24 MR. McCALL: His mother and his father. When
25 he came to this country, he was unable to speak or read

1 English.

2 THE COURT: Doesn't the presentence report --
3 and, again, I want to try to make sure I don't confuse
4 any of the defendants -- indicate that he was working in
5 the Dominican Republic?

6 MR. McCALL: Yes, your Honor. Yes, he had jobs
7 in the Dominican Republic. When he came to this
8 country, he was unable to speak or read English, with no
9 formal education, none, not even one grade, your Honor.
10 Simply put, to that extent, he hasn't had the advantages
11 that certainly everyone at these tables have had with
12 parents that gave us the opportunity to go to school and
13 learn.

14 I've been to 7 Daria Court with certain
15 co-counsel here, and he was not living a high life, by
16 any stretch of the imagination.

17 That being said, your Honor, it was his
18 decision to engage in this business, truly, as a family
19 affair, unfortunately.

20 What I'm asking the court to consider is that
21 his role in the offense and the offense conduct -- the
22 seriousness of the offense is reflected in the Guideline
23 range of 135 to 168 months -- I'm asking the court to
24 consider the fact that he has absolutely completely no
25 prior record. His age, I think he's aged beyond his

1 years, your Honor. He has very poor health. He's been
2 seen several times. He has a circulation problem in his
3 right leg. That in addition to the fact that he faces
4 certain deportation, he's not going to be a free man in
5 this country even for a single day. He faces a
6 significant sentence, no matter what, at which time he
7 will be deported. I'm asking the court to consider that
8 he's a candidate -- because of no record, his poor
9 health, and certain deportation, that he's a candidate
10 for the low end of the Guideline range.

11 THE COURT: I'm addressing Hector B. Arias.

12 Mr. Arias, you now have an opportunity but not
13 an obligation to speak before I decide what sentence to
14 impose. That means that you do not have to say anything
15 if you don't want to, but if there's anything you would
16 like to say, this is the time.

17 Perhaps the interpreter --

18 THE INTERPRETER: I think if the defendant
19 keeps his voice up, I can do it from here.

20 THE DEFENDANT: I want to apologize to the
21 government of the United States for the mistake that I
22 have made and to the judge as well. And that's all.
23 God bless you.

24 THE COURT: Mr. Arias, please stand.

25 In connection with the one count to which you

1 have pled guilty, I hereby sentence you to serve 168
2 months in the custody of the Attorney General of the
3 United States, to be followed by 60 months of supervised
4 release on the standard conditions and on the additional
5 conditions that you use your true name and other
6 identifying information at all times, that you not
7 possess a firearm or other dangerous weapon, that you
8 participate in any substance abuse testing or treatment
9 program proscribed by Probation and, if you're deported
10 or ordered deported, you leave the United States
11 immediately and not return without the authorization of
12 the Attorney General.

13 In addition, you are to pay a \$100,000 fine as
14 a condition of your supervised release, and there is
15 also a \$100 special assessment.

16 In your plea agreement, you waived some but not
17 all of the rights to appeal that you had or ordinarily
18 have. As I read it, you have not given up your right to
19 appeal the decisions relating to your sentence if
20 they're otherwise appealable. But if you wish to pursue
21 an appeal, one must be filed -- a notice of appeal must
22 be filed within ten days of the entry of judgment. If
23 you would like to appeal but cannot afford a lawyer, one
24 will be appointed to represent you at public expense.

25 As far as I'm concerned, you are the living

1 embodiment of one of the most dismal failures of many
2 the systems in the United States that I have ever
3 directly encountered. You were in Barney (sic) in the
4 Dominican Republic. As far as I can tell from the
5 presentence report, you were able to work there. Now,
6 lots of people want to come to the United States, and
7 this country is extremely generous in admitting people
8 legally and giving people an opportunity, but not
9 everybody who wants to come here can be accepted. You
10 came here illegally, you evaded deportation, you used
11 false identity, you lived in subsidized housing, and you
12 didn't come here to work hard honestly and send money
13 back, you came here to deal drugs. As far as I can
14 tell, that was your main occupation. And what you've
15 done in the process is contribute to really injuring if
16 not destroying many lives. And you can look at your son
17 sitting next to you, who's going to go to prison for
18 many years because of the directions you gave him. You
19 can look at your wife sitting next to you, and she's
20 going to go to prison for many years. You can look at
21 the mother of your grandchild, Ms. Gonzalez, and you can
22 think about all the generations of your own family that
23 you've substantially injured if not destroyed. And then
24 you can look further down at all these addicted people
25 who's potential for any kind of happy life is threatened

1 because they can get heroin.

2 That's what you contributed to. And I think it
3 was Ms. Gonzalez who said something very interesting and
4 important to all of these proceedings, and that is, when
5 your son recruited her when she was pregnant to
6 participate in this, he told her it was riskless. And I
7 get the impression from this case, there must be a lot
8 of people in or from Barney and the Dominican Republic
9 who think coming to this country and dealing drugs is
10 riskless, and I hope the next time you call or write
11 home, you'll tell them it's not. Because part of the
12 reason for this sentence is to recognize the seriousness
13 of the offense you committed. Part of it is to send a
14 message to you that if and when you get out of prison
15 and get deported you don't come back here. But it's
16 also intended to send a message to other people. This
17 is not riskless. This is not the Boston Municipal
18 Court. You deal heroin in this country, you may end up
19 here, and you'll get a great lawyer appointed for
20 nothing, and you'll get careful attention from the
21 Probation Department and the judge, but, ultimately, the
22 sentencing laws in the United States courts are severe,
23 and they're severe because these crimes are serious.

24 You're the person primarily responsible for
25 everybody else being here, and that's why the Guidelines

1 say that 168 months is reasonable for somebody. And I
2 can't imagine, you know, if it's reasonable for somebody
3 why it wouldn't be reasonable for you.

4 The federal prisons have medical facilities
5 and, if you have medical needs while you're in prison,
6 they'll address them. But when you get out, you're
7 going to be on supervised release. The reason I've
8 imposed a hundred thousand dollars fine is I'm not
9 satisfied -- I don't know where all this money went. I
10 mean, I listened to Ms. Charles, and I'm not satisfied
11 she has no money, although there may be immunity issues
12 in pursuing that with her. But if the government finds
13 the money, you'll have to pay the fine or, if you have
14 any money, you'll have to pay the fine. But when you're
15 deported, if you come back to the United States, you'll
16 get caught again, and then you can be brought back in
17 front of me, locked up for about five more years in this
18 case, and then prosecuted for coming back again.

19 So you're going to have many years to think
20 about what you're going to do when you get out of
21 prison, and I hope you'll use that time in part to
22 become determined not to come back to the United States
23 and also in part to tell people back in the Dominican
24 Republic that coming here illegally and dealing drugs is
25 a big mistake.

1 You may be seated.

2 MR. McCALL: Your Honor, my client asked me to
3 request the court if there could be a recommendation
4 that he serve his sentence at Fort Dix. He has family
5 in that area.

6 THE COURT: It's the practice of the Bureau of
7 Prisons to incarcerate a defendant at the facility
8 consistent with his security level that is nearest to
9 his family, and I ordinarily don't make any
10 recommendations. You should explain all that to the
11 Bureau of Prisons, but I'm not going to make the
12 recommendation in this case.

13 With regard to Hector A. Arias, he too has read
14 the presentence report. We'll go through the
15 objections. But as agreed by the parties and the court,
16 as I understand it, the defendant is responsible for one
17 to three kilograms. There is no adjustment for
18 obstruction of justice. He does get acceptance of
19 responsibility. I believe the only disputed issue is
20 role in the offense. Is that correct?

21 MR. PELGRO: That's correct, your Honor.

22 MR. MURPHY: That's correct, your Honor.

23 THE COURT: We'll go through the other
24 objections eventually -- why don't we go through those
25 now just to make sure I endorse the -- the first

01-10056
USDC, MA.
Wolfe, J.

MANDATE

United States Court of Appeals For the First Circuit

No. 02-2296

UNITED STATES,

Appellee,

v.

HECTOR BIENVENIDO-ARIAS,

Defendant, Appellant.

Before

Boudin, Chief Judge,
Lipez and Howard, Circuit Judges.

JUDGMENT

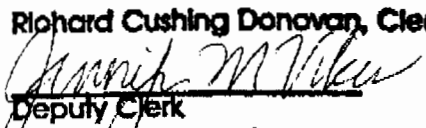
Entered: May 27, 2004

There was a very clear waiver of any claim of error in regard to the imposition of a four level sentencing enhancement in light of appellant's leadership role in the conspiracy to which he pled guilty. See U.S.S.G. § 3B1.1(a).

The government's motion for summary affirmance is granted.
1st Cir. R. 27(c).

Certified and Issued as Mandate
under Fed. R. App. P. 41.

Richard Cushing Donovan, Clerk


Deputy Clerk

Date: 4/17/04

By the Court:

Richard Cushing Donovan, Clerk.

By: JULIE GREGG
Appeals Attorney.

[cc: Douglas Beaton, Esq., Michael Pelgro, AUSA, Peter Levitt,
AUSA, Dina Chaitowitz, AUSA, Virginia Vander Jagt, AUSA]

